REMARKS

Claims 1, 10, 39, 40 and 41 have been amended and claims 2, 5, 11 and 13 have been cancelled without prejudice or disclaimer of the subject matter recited therein. Claims 1, 10, 15-23, 32, 34, 35 and 38-41 are pending. Claims 15-23, 32, 34 and 35 have been withdrawn from consideration. Claims 1, 10, 40 and 41 are the independent claims. No new matter is presented in this Amendment. Claim 1 has been amended to incorporate the subject mater of claims 2 and 5, claim 10 has been amended to incorporate the subject matter of claims 2 and 13, claim 40 has been amended to incorporate the subject matter of claim 5, and claim 41 has been amended to incorporate the subject matter of claims 2 and 13.

REJECTIONS UNDER 35 U.S.C. §112:

Claims 1, 2, 5, 10, 11, 13 and 38-41 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully traverse this rejection for at least the following reason.

The Examiner indicates that the recitation "thermal-absorbent element-included hydroxide", "thermal-absorbent element-included oxyhydroxide", "thermal-absorbent element-included oxycarbonate,'" and "thermal-absorbent element-included hydroxycarbonate", in claims 1, 5, 10, 13, 40 and 41 is unclear, thereby rendering the scope of the claims indefinite. The Examiner further states that such a recitation is not defined by the claim, and the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Applicants note that these recitations were originally stated in the claims and the Examiner has already issued several Office Actions taking into consideration these recitations and in none of those Office Actions has the Examiner found these recitations to be unclear or indefinite. Furthermore, in none of the previous Office Actions has the Examiner noted that the specification fails to provide a standard for ascertaining the requisite degree, or that one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Accordingly, Applicants believe that if the Examiner has not found these recitations to be unclear or indefinite in the past, there is no basis to believe that these recitations are now indefinite or unclear. For the same reasons, Applicants believe that if the specification has provided a sufficient standard for ascertaining the requisite degree in the past, there is no basis for the specification not ascertaining a requisite degree now.

Accordingly, Applicant's respectfully request that the rejection of claims 1 and 38-41 under 35 U.S.C. §112, second paragraph, be withdrawn.

Claims 2, 5, 11 and 13 have been cancelled without prejudice of disclaimer of the subject matter recited therein. Accordingly, the rejection of these claims is moot.

DOUBLE PATENTING

Claims 1-2, 5, 10-11 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 11 and 15 of U.S. Patent No. 6,797,435 in view of Amatucci et al. (5,705,291).

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent No. 6,797,435 relates to a positive active material with a surface-treatment layer comprising at least one coating element-included compound, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim under 35 U.S.C. §§ 112, 102 and 103 are resolved.

Claims 1-2, 5, 10-11 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 12-17 of U.S. Patent No. 6,753,111.

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent No. 6,753,111 relates to a positive active material with a surface-treatment layer that further comprises a coating-element included oxide or hydroxide, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim under 35 U.S.C. §§ 112, 102 and 103 are resolved.

Claims 1-2, 5, 10-11 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15, 28-30, 32-35 of copending Application No. 10/189,384 (U.S. Patent Application Publication 2003/0054250).

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent Application No. 10/189,384 relates to a positive electrode comprising a surface-treatment layer comprising a conductive agent and at least one coating-element-containing hydroxide, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim under 35 U.S.C. §§ 112, 102 and 103 are resolved.

Claims 1-2, 5, 10-11 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 23-28 of copending Application No. 10/072,923 (U.S. Patent Application Publication 2003/0003352) in view of Amatucci et al 5,705,291.

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent Application No. 10/072,923 relates to a positive electrode comprising a surface-treatment layer formed on a positive active material layer, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim under 35 U.S.C. §§ 112, 102 and 103 are resolved.

Claims 1-2, 5, 10-11 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 27-37 of copending Application No. 09/897,445 (U.S. Patent Application Publication 2002/0071990).

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent Application No. 09/897,445 relates to a positive active material with a surface-treatment layer, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim

under 35 U.S.C. §§ 112, 102 and 103 are resolved.

Claims 1-2, 5, 10-11 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 25-37 of copending Application No. 10/627,725 (U.S. Patent Application Publication 2004/0018429).

Applicants respectfully traverse this rejection for at least the following reason.

U.S. Patent Application No. 10/627,725 relates to a positive active material with a surface-treatment layer, while an aspect of the present invention relates to a positive active material composition for a rechargeable lithium battery comprising a positive active material and at least one additive.

Furthermore, since claims 1, 2, 5, 10, 11 and 13 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B).

As such, it is respectfully requested that the applicant be allowed to address any provisional obviousness-type double patenting issues remaining once the rejections of the claim under 35 U.S.C. §§ 102 and 103 are resolved.

REJECTIONS UNDER 35 U.S.C. §102:

Claims 10 and 41 are rejected under 35 U.S.C. §102(b) as being anticipated by Emeis et al. (U.S. Patent 3,480,474).

Applicants respectfully traverse this rejection for at least the following reasons.

Regarding the rejection of independent claim 10, it is noted that claim 10 recites a positive active material composition for a rechargeable lithium battery comprising, amongst other novel features, a positive active material comprising at least one lithiated compound; and at least one additive compound selected from the group consisting of a thermal-absorbent element-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, wherein the thermal-absorbent element is one of amorphous Al and crystalline B, and wherein said at least one additive compound comprises an amount at or between 0.1 weight % and 1

weight % based on the weight of the positive active material composition, and wherein the at least one lithiated compound is a compound selected from the group consisting of compounds represented by the formulas 1 to 13 wherein, $0.95 \leq x \leq 1.1$, $0 \leq y \leq 0.5$, $0 \leq z \leq 0.5$, $0 \leq \alpha \leq 2$, M is one element selected from the group consisting of Al, Ni, Co, Mn, Cr, Fe, Mg, Sr, V, and rare earth elements, A is selected from the group consisting of O, F, S, and P, and X is selected from the group consisting of F, S, and P, and wherein said additive compound is prepared by drying a liquid comprising a thermal-absorbent element or a thermal-absorbent element-included compound at a temperature at or between room temperature and 200°C for at or between 1 and 24 hours.

Emeis discloses a process for treating semiconductor slices, particularly silicon, which comprises contacting etched and rinsed crystals with an aqueous boron-containing alkali hydroxide solution. Emeis fails to teach or suggest a positive active material composition for a rechargeable lithium battery or that the composition comprises the elements recited in independent claim 10.

Accordingly, Applicants respectfully assert that the rejection of claim 10 under 35 U.S.C. § 102(b) should be withdrawn because Emeis fails to teach or suggest each feature of independent claim 10.

Regarding the rejection of independent claim 41, it is noted that claim 41 recites positive active material composition for a rechargeable lithium battery comprising, amongst other novel features formulas 1 to 13 recited in independent claim 10.

As noted above, Emeis fails to teach or suggest the features of independent claim 10 which are also recited in independent claim 41 and thus Emeis fails to teach or suggest each feature of independent claim 41.

Accordingly, Applicants respectfully assert that the rejection of claim 41 under 35 U.S.C. § 102(b) should be withdrawn because Emeis fails to teach or suggest each feature of independent claim 41.

Claims 10 and 41 are rejected under 35 U.S.C. §102(b) as being anticipated by Roesler et al. (U.S. Patent 5,290,476).

Applicants respectfully traverse this rejection for at least the following reasons.

Regarding the rejection of independent claim 10, it is noted that claim 10 recites a positive active material composition for a rechargeable lithium battery comprising, amongst other novel features, a positive active material comprising at least one lithiated compound; and at least one additive compound selected from the group consisting of a thermal-absorbent element-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, wherein the thermal-absorbent element is one of amorphous Al and crystalline B, and wherein said at least one additive compound comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition, and wherein the at least one lithiated compound is a compound selected from the group consisting of compounds represented by the formulas 1 to 13 wherein, $0.95 \leq x \leq 1.1$, $0 \leq y \leq 0.5$, $0 \leq z \leq 0.5$, $0 \leq \alpha \leq 2$, M is one element selected from the group consisting of Al, Ni, Co, Mn, Cr, Fe, Mg, Sr, V, and rare earth elements, A is selected from the group consisting of O, F, S, and P, and X is selected from the group consisting of F, S, and P, and wherein said additive compound is prepared by drying a liquid comprising a thermal-absorbent element or a thermal-absorbent element-included compound at a temperature at or between room temperature and 200°C for at or between 1 and 24 hours.

Roesler teaches a process for preparing microcrystalline perborate hydrate products and highly concentrated, storage stable aqueous solutions which are used for said preparation in one variant of the process and which contain a boron-oxygen compound, hydrogen peroxide, and sodium hydroxide in a special composition (column 1, lines 6-12). Roesler fails to teach or suggest a positive active material composition for a rechargeable lithium battery or that the composition comprises the elements recited in independent claim 10.

Accordingly, Applicants respectfully assert that the rejection of claim 10 under 35 U.S.C. § 102(b) should be withdrawn because Roesler fails to teach or suggest each feature of independent claim 10.

Regarding the rejection of independent claim 41, it is noted that claim 41 recites a positive active material composition for a rechargeable lithium battery comprising, amongst other novel features, at least one lithiated compound selected from the group consisting of compounds represented by the formulas 1 to 13 wherein, $0.95 \leq x \leq 1.1$, $0 \leq y \leq 0.5$, $0 \leq z \leq 0.5$, $0 \leq \alpha \leq 2$, M is one element selected from the group consisting of Al, Ni, Co, Mn, Cr, Fe, Mg, Sr, V, and rare earth elements, A is selected from the group consisting of O, F, S, and P, and X is

selected from the group consisting of F, S, and P.

As noted above, Roesler teaches a process for preparing microcrystalline perborate hydrate products and highly concentrated, storage stable aqueous solutions which are used for said preparation in one variant of the process and which contain a boron-oxygen compound, hydrogen peroxide, and sodium hydroxide in a special composition (column 1, lines 6-12). Roesler fails to teach or suggest a positive active material composition for a rechargeable lithium battery or that the composition comprises the elements recited in independent claim 41.

Accordingly, Applicants respectfully assert that the rejection of claim 41 under 35 U.S.C. § 102(b) should be withdrawn because Roesler fails to teach or suggest each feature of independent claim 41.

Claims 1, 10 and 40 are rejected under 35 U.S.C. §102(b) as being anticipated by Yano et al. (U.S. Patent 5,827,494).

Applicants respectfully traverse this rejection for at least the following reasons.

Regarding the rejection of independent claim 1, it is noted that claim 1 recites a positive active material composition for a rechargeable lithium battery, comprising, amongst other novel features, at least one lithiated compound selected from the group consisting of compounds represented by the formulas 1 to 13.

Yano discloses an active material powder for a non-sintered nickel electrodes of alkaline batteries with which the diffusion of cobalt hydroxide covering the surface of nickel hydroxide particles into the particles is suppressed, so that the function of the cobalt hydroxide for increasing the conductivity of the electrode can be maintained over a long period of charge-discharge cycles (column 2, lines 11-18).). Yano further teaches that the active powder is prepared by immersing nickel hydroxide particles or solid solution particles consisting of nickel hydroxide in a solution of a cobalt salt and a salt of at least one metal, adding an alkali to the solution to co-precipitate cobalt hydroxide and a hydroxide of the metal, thereby covering the surface of the nickel hydroxide particles or solid solution particles (column 2, lines 58-67 and column 3, lines 1-5). Accordingly, although Yano discloses an active material powder for a battery, Yano fails to teach or suggest the compounds represented by formulas 10 to 13 as recited in independent claim 1, and furthermore the active material powder disclosed in Yano is

for electrodes of alkaline batteries and not for rechargeable lithium batteries as recited in independent claim 1.

Accordingly, Applicants respectfully assert that the rejection of claim 1 under 35 U.S.C. § 102(b) should be withdrawn because Yano fails to teach or suggest each feature of independent claim 1.

Regarding the rejection of independent claim 10, it is noted that claim 10 recites a positive active material composition for a rechargeable lithium battery, comprising amongst other novel features, at least one lithiated compound selected from the group consisting of compounds represented by the formulas 1 to 13.

As noted above, Yano discloses an active material powder for non-sintered nickel electrodes of alkaline batteries. The active powder is prepared by immersing nickel hydroxide particles or solid solution particles consisting of nickel hydroxide in a solution of a cobalt salt and a salt of at least one metal, adding an alkali to the solution to co-precipitate cobalt hydroxide and a hydroxide of the metal, thereby covering the surface of the nickel hydroxide particles or solid solution particles (column 2, lines 58-67 and column 3, lines 1-5).

Accordingly, although Yano discloses an active material powder for a battery, the active material powder is for electrodes of alkaline batteries and not for rechargeable lithium batteries as recited in independent claim 10. Furthermore, Yano differs from the composition recited in independent claim 10 in that the at least one additive compound is an amorphous thermal-absorbent element.

Accordingly, Applicants respectfully assert that the rejection of claim 10 under 35 U.S.C. § 102(b) should be withdrawn because Yano fails to teach or suggest each feature of independent claim 10.

Regarding the rejection of independent claim 40, it is noted that claim 40 recites a positive active material composition for a rechargeable lithium battery comprising amongst other novel features, a positive active material comprising at least one lithiated compound; and a thermal-absorbent element-included hydroxide, wherein the thermal-absorbent element included hydroxide is an amorphous Al-included hydroxide, and wherein said thermal-absorbent element-included hydroxide comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition, and wherein said additive compound is prepared by drying a liquid comprising the thermal-absorbent element or the thermal-absorbent

element-included compound at a temperature ranging from at or between room temperature and 200°C for at or between 1 and 24 hours.

Yano discloses an active material powder for non-sintered nickel electrodes of alkaline batteries. However, Yano fails to teach or suggest that the active material powder is for rechargeable lithium batteries as recited in independent claim 40 or that the thermal-absorbent element included hydroxide is an amorphous Al-included hydroxide, and wherein said thermal-absorbent element-included hydroxide comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition.

Accordingly, Applicants respectfully assert that the rejection of claim 40 under 35 U.S.C. § 102(b) should be withdrawn because Yano fails to teach or suggest each feature of independent claim 40.

REJECTIONS UNDER 35 U.S.C. §103:

Claims 1-2, 5, 10-11 and 13 and 38-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Amatucci et al. (U.S. Patent 5,705,291) in view of the Japanese publication JP 09-1718103 (hereinafter referred to as *"the JP'813 publication"*).

Regarding the rejection of independent claim 1, it is noted that claim 1 recites positive active material composition for a rechargeable lithium battery, comprising, amongst other novel features, a positive active material comprising at least one lithiated compound; and at least one **amorphous additive** compound **selected from** the group consisting of **a thermal-absorbent element**-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, wherein said at least one amorphous additive compound comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition and **wherein the thermal-absorbent element is** an element selected from the group consisting of Mg, **Al**, Co, K, Na, Ca, Si, Ti, Sn, V, Ge, Ga, As, and Zr, and wherein the at least one lithiated compound is a compound selected from the group consisting of compounds represented by the formulas 1 to 13.

Applicants respectfully assert that the combination of Amatucci and the JP '813 publication fails to disclose each of these features for at least the following reasons.

The Office Action relies on Amatucci for a teaching of a positive electrode coated with a passivating layer of a composition comprising boron oxide, boric acid, lithium hydroxide, aluminum oxide, lithium aluminate, lithium metaborate, silicon dioxide, lithium silicate, or mixtures thereof (column 2, lines 5-24 of Amatucci). The Office Action indicates that these coating compositions represent additive compounds that are added to the positive active material. The Office Action also states that Amatucci discloses that suitable materials for a coating film are either in a crystalline or glassy form, such as borates or aluminates and that borate and lithiated borate glasses are particularly suitable for these purposes (column 4, lines 13-17). The Office Action also indicates that a glassy material stands for any of various amorphous materials and thus glassy materials are amorphous materials. In other words, the only glassy or amorphous materials taught by Amatucci, as additives, are borate and lithiated borate glasses.

The Office Action also recites that Amatucci fails to teach or suggest the specific thermal absorbent material and relies on the JP '813 publication for such teaching. In particular, the Office Action recites that the JP '813 publication discloses an active material comprising a lithiated compound and aluminum hydroxide wherein the aluminum hydroxide is the thermal absorbent element (page 24). It is noted that the JP '813 publication makes no reference as to the form of the aluminum hydroxide, that is, the JP '813 publication fails to teach or suggest whether the aluminum hydroxide is amorphous or crystalline.

Finally the Office Action states that in view of the above, it would have been obvious to one skilled in the art at the time of the invention to use the specific additive compound of the JP '813 publication in the positive active material of Amatucci.

Responsively, applicants respectfully note that the reasoning of the Examiner appears to be incomplete for the following reasons.

Although Amatucci discloses using materials having crystalline and glassy form, Amatucci as noted above limits the materials having glassy form (amorphous) to borate and lithiated borate. There is no suggestion in Amatucci of using an **amorphous additive** compound **selected from** the group consisting of **a thermal-absorbent element**-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, **wherein the thermal-absorbent element is** an element selected from the group consisting of Mg, **Al**, Co, K, Na, Ca, Si, Ti, Sn, V, Ge, Ga, As, and Zr, as recited in the independent claim.

The JP '813 publication on the other hand is relied on for a teaching of aluminum hydroxide as a thermal absorbent element and not for a thermal absorbent element having an amorphous form. Furthermore, as noted above the JP '813 publication does not teach or suggest the form of the aluminum hydroxide. Accordingly, the only teaching of a material having a glassy form (amorphous form) is in Amatucci. However, this teaching is limited to borate and lithiated borate glasses.

Accordingly, neither Amatucci nor the JP '813 publication, whether taken singly or combined teach or suggest an **amorphous additive** compound **selected from** the group consisting of **a thermal-absorbent element**-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, **wherein the thermal-absorbent element is** an element selected from the group consisting of Mg, **Al**, Co, K, Na, Ca, Si, Ti, Sn, V, Ge, Ga, As, and Zr.

Accordingly, Applicants respectfully assert that the rejection of claim 1 under 35 U.S.C. §103(a) should be withdrawn because neither Amatucci nor the JP '813 publication, whether taken singly or combined teach or suggest each feature of independent claim 1.

Furthermore, Applicants respectfully assert that dependent claims 38 and 39 are allowable at least because of their dependence from claim 1, and because they include additional features which are not taught or suggested by the prior art. Therefore, it is respectfully submitted that claims 38 and 39 also distinguish over the prior art.

Regarding the rejection of claims 2 and 5 it is noted that these claims have been cancelled without prejudice or disclaimer of the subject matter recited therein. Accordingly, the rejection of these claims is moot.

Regarding the rejection of claim 10, it is noted that claim 10 recites a positive active material composition for a rechargeable lithium battery comprising, amongst other novel features, at least one additive compound selected from the group consisting of **a thermal-absorbent element**-included hydroxide, a thermal-absorbent element-included oxyhydroxide, a thermal-absorbent element-included oxycarbonate, and a thermal-absorbent element-included hydroxycarbonate, **wherein the thermal-absorbent element is one of amorphous Al and**

crystalline B.

As noted above, Amatucci discloses the use of crystalline and glassy materials, but fails to teach or suggest materials such as an amorphous Al or a crystalline B. The only materials having a glassy or amorphous form taught by Amatucci are borate and lithiated borate glasses.

The JP '813 publication on the other hand teaches the use of aluminum hydroxide as an additive but fails to teach or suggest whether this additive has an amorphous or crystalline form.

Since none of the references, whether taken singly or combined teach or suggest the particular additive or the form of the additive as recited in the independent claim, Applicants respectfully assert that the rejection of claim 10 under 35 U.S.C. §103(a) should be withdrawn.

Regarding the rejection of claims 11 and 13, it is noted that claims 11 and 13 have been cancelled without prejudice or disclaimer of the subject matter recited therein. Accordingly, the rejection of these claims is moot.

Regarding the rejection of independent claim 40, it is noted that claim 40 recites a positive active material composition for a rechargeable lithium battery comprising, amongst other novel features a thermal-absorbent element-included hydroxide, wherein the thermal-absorbent element included hydroxide is an **amorphous Al-included hydroxide**, and wherein said thermal-absorbent element-included hydroxide comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition.

As noted above, Amatucci discloses the use of materials having a crystalline and glassy or amorphous form, and in particular borate and lithiated borate glasses, as the materials having a glassy form. However, Amatucci fails to teach or suggest an **amorphous Al-included hydroxide**.

The JP '813 publication on the other hand teaches the use of aluminum hydroxide as an additive but fails to teach or suggest whether this additive is amorphous or crystalline or of any other form.

Since none of the references, whether taken singly or combined teach or suggest an **amorphous Al-included hydroxide**, Applicants respectfully assert that the rejection of claim 40 under 35 U.S.C. §103(a) should be withdrawn.

Regarding the rejection of independent claim 41, it is noted that claim 41 recites positive active material composition for a rechargeable lithium battery comprising, amongst other novel features, **a thermal-absorbent element**-included hydroxide, wherein the thermal-absorbent element included hydroxide is **a crystalline B-included hydroxide**, and wherein said thermal-absorbent element-included hydroxide comprises an amount at or between 0.1 weight % and 1 weight % based on the weight of the positive active material composition.

As noted above, although Amatucci discloses the use of materials for a coating film having crystalline or glassy form, the materials having a glassy form include **borate and lithiated borate glasses**. Therefore, Amatucci fails to teach or suggest an **amorphous Al-included hydroxide**.

The JP '813 publication on the other hand teaches the use of aluminum hydroxide as an additive but fails to teach or suggest whether this additive is amorphous or crystalline or of any other form.

Since none of the references, whether taken singly or combined teach or suggest an **amorphous Al-included hydroxide**, Applicants respectfully assert that the rejection of claim 41 under 35 U.S.C. §103(a) should be withdrawn

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

STEIN, MCEWEN & BUI, LLP

Date: 8/10/06

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